

EXHIBIT

1

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
)
 LAND O'LAKES, INC., and)
 CUSHING, OKLAHOMA)
 BROWNFIELDS, LLC)
)
 Defendants.)

Case No. 5:16-cv-00170-PRW

JUDGE PATRICK R. WYRICK

**CERCLA CONSENT DECREE REGARDING
RECOVERY OF PAST RESPONSE COSTS UNDER SECTION 107 AND
ALLEGED VIOLATIONS OF SECTION 106
UNILATERAL ADMINISTRATIVE ORDER**

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I. BACKGROUND

A. The United States of America (“United States”), on behalf of the Administrator of the U.S. Environmental Protection Agency (“EPA”), filed a complaint in this matter (February 22, 2016) pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. § 9607 (CERCLA), as amended, seeking reimbursement of response costs incurred or to be incurred for response actions taken at or in connection with the release or threatened release of hazardous substances at the Hudson Oil Refinery Superfund Site in Cushing, Payne County, Oklahoma (also sometimes referred to as the Hudson Refinery Superfund Site, OKD082471988) (“the Site”).

B. Prior to this civil action, on January 6, 2009, EPA issued to Land O’Lakes, Inc. (“Land O’Lakes”) a CERCLA § 106(a) Unilateral Administrative Order for Remedial Design and Remedial Action for the Site (“Hudson UAO”). Land O’Lakes remains subject to the Hudson UAO.

C. By letter dated June 19, 2015 regarding “Revised Draft Data Evaluation Report and Revised Draft Remedial Action Report And Notice of Violation of UAO,” EPA certified completion of the Remedial Action at the Site, but alleged that Land O’Lakes had failed to fully comply with Hudson UAO paragraphs 51, 60, 61, 62, 64, 65, 66, 67, 68, 75, 86, 88, and 90 and that paragraph 120 of the UAO authorizes a civil penalty of up to \$32,500 per day for each day Land O’Lakes violated the Hudson UAO (“June 19, 2015 EPA Letter”).

D. On June 23, 2015, Land O’Lakes filed a lawsuit against the United States in the Western District of Oklahoma seeking a declaratory judgment of non-liability under CERCLA. No. 5:15-cv-00683-R (W.D. Okla.) at Doc. 1. On September 1, 2015, Land O’Lakes amended its complaint to add a citizen suit claim under the Resource Conservation and Recovery Act, 42 U.S.C. § 6972 *et seq. Id.* at Doc. 22. The court dismissed the entire lawsuit for lack of subject matter jurisdiction on Feb. 10, 2016. *Id.* at Doc. 37.

E. On August 18, 2015, Land O’Lakes filed a CERCLA § 106(b) petition with the EPA Environmental Appeals Board, Petition No. 15-01, seeking reimbursement for costs Land O’Lakes incurred under the Hudson UAO (the “Land O’Lakes § 106(b) Petition”). Land O’Lakes sought reimbursement from EPA in the amount of \$17,646,502 plus interest accrued and accruing.

F. The defendants that have entered into this Consent Decree (“Settling Defendants”) do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint or in the June 19, 2015 EPA Letter. Plaintiff does not admit any liability to Settling Defendants arising out of the transactions or occurrences alleged in the Land O’Lakes § 106(b) Petition.

G. The United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of these matters without further litigation and without the admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States, and upon Settling Defendants, and their successors and assigns. Any change in ownership or corporate or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

IV. DEFINITIONS

3. Unless otherwise expressly provided in this Consent Decree, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree, the following definitions shall apply:

“Affected Property” means all real property comprising the Site and any other real property adjacent to the Site owned or controlled by Owner Settling Defendant where EPA determines, at any time, that access or land, water, or other resource use restrictions are needed to implement response actions at the Site, including, but not limited to, the Site.

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675, as amended.

“Consent Decree” shall mean this Consent Decree.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“DOJ” shall mean the U.S. Department of Justice and its successor departments, agencies, or instrumentalities.

“Effective Date” shall mean the date upon which the approval of this Consent Decree is recorded on the Court’s docket.

“EPA” shall mean the U.S. Environmental Protection Agency.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Hudson Refinery Superfund Site Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Hudson UAO” shall mean the CERCLA § 106(a) Unilateral Administrative Order for Remedial Design and Remedial Action that EPA issued to Land O’Lakes on January 6, 2009.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“June 19, 2015 EPA Letter” shall mean the letter described in Section I.C. above, a copy of which is attached to this Consent Decree as Exhibit 1.

“Land O’Lakes § 106(b) Petition” means Land O’Lakes’ CERCLA § 106(b) petition with the EPA Environmental Appeals Board, Petition No. 15-01, filed August 18, 2015.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Owner Settling Defendant” shall mean Cushing, Oklahoma Brownfields, LLC.

“Paragraph” shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper- or lower-case letter.

“Parties” shall mean the United States and Settling Defendants.

“Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that EPA or DOJ on behalf of EPA has incurred and/or paid at or in connection with the Site through the Effective Date, plus accrued Interest on all such costs through such date. However, Past Response Costs do not include Hudson UAO oversight costs incurred and/or paid by EPA after May 17, 2021.

“Plaintiff” shall mean the United States.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Section” shall mean a portion of this Consent Decree identified by a Roman numeral.

“Settling Defendants” shall mean Land O’Lakes, Inc. and Cushing, Oklahoma Brownfields, LLC.

“Settling Defendants’ Past Response Costs” shall mean all costs, including but not limited to direct and indirect costs, that Settling Defendants have incurred and/or paid at or in connection with the Site through the Effective Date, plus accrued Interest on all such costs through such date.

“Site” shall mean the Hudson Oil Refinery Superfund Site, encompassing approximately 200 acres, located at 400 West Main Street (Highway 33) in Cushing, Payne County, Oklahoma (also sometimes referred to as the Hudson Refinery Superfund Site, OKD082471988).

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA.

V. PAYMENT OF RESPONSE COSTS

4. **Payment by Settling Defendants for Past Response Costs.** Settling Defendants shall, within 15 days of the Effective Date, pay EPA \$5,700,000, together with an additional amount of Interest accrued on the payment amount from the date this Consent Decree is lodged with the Court through the date of payment. Settling Defendants shall make this payment in accordance with Paragraphs 5 and 7.

5. Settling Defendants shall make payment at <https://www.pay.gov> in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit (FLU) of the U.S. Attorney’s Office for the Western District of Oklahoma after the Effective Date. The payment instructions provided by the FLU

will include a Consolidated Debt Collection System (CDCS) number, which shall be used to identify all payments required to be made in accordance with this Consent Decree. The FLU will provide the payment instructions to:

Jonathan C. Miesen
Associate General Counsel-Litigation
Land O'Lakes, Inc.
4001 Lexington Avenue North
Arden Hills, MN 55126
jcmiesen@landolakes.com

on behalf of Settling Defendants. Settling Defendants may change the individual to receive payment instructions on their behalf by providing written notice of such change to DOJ and EPA in accordance with Section XIV (Notices and Submissions).

6. **Deposit of Payment.** The total amount to be paid pursuant to Paragraph 4 shall be deposited by EPA in the Hudson Refinery Superfund Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

7. **Notice of Payment.** At the time of payment, Settling Defendants shall send to EPA and DOJ, in accordance with Section XIV (Notices and Submissions), a notice of this payment including references to the CDCS Number, Site/Spill ID Number OKD082471988, and DJ Number 90-11-3-11365.

VI. FAILURE TO COMPLY WITH CONSENT DECREE

8. **Interest on Late Payments.** If Settling Defendants fail to make any payment under Paragraph 4 (Payment by Settling Defendants for Past Response Costs) by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

9. **Stipulated Penalty**

a. If any amounts due to EPA under Paragraph 4 (Payment by Settling Defendants for Past Response Costs) are not paid by the required date, Settling Defendants shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 8, \$5,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by EPA. Settling Defendants shall make all payments at <https://www.pay.gov> in accordance with the procedures under Paragraph 5 and send notice of this payment in accordance with Paragraph 7 (Notice

of Payment). Settling Defendants shall indicate in the comment field on the <https://www.pay.gov> payment form that the payment is for stipulated penalties.

c. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing in this Consent Decree shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

10. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

11. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

12. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency of any Settling Defendant or the failure by any Settling Defendant to make the payments required under this Consent Decree, the remaining Settling Defendants shall be responsible for such payments.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section V (Payment of Response Costs) or from performance of any other requirements of this Consent Decree.

VII. COVENANTS BY PLAINTIFF

14. **Covenants for Settling Defendants by United States.** Except as specifically provided in Section VIII (Reservation of Rights by United States), the United States:

a. covenants not to sue or to take administrative action against Settling Defendants pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), to recover Past Response Costs. These covenants shall take effect upon the Effective Date;

b. covenants not to sue or take administrative action for civil penalties against Settling Defendant Land O'Lakes for the violations of the Hudson UAO alleged in the June 19, 2015 EPA Letter.

These covenants are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. These covenants extend only to Settling Defendants and do not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Paragraph 14 (Covenants for Settling Defendants by United States). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, except as specifically provided in Paragraph 14.b.;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

IX. COVENANTS BY SETTLING DEFENDANTS

16. **Covenants by Settling Defendants.** Within 15 Days of the Effective Date, Settling Defendant Land O'Lakes shall dismiss with prejudice the Land O'Lakes § 106(b) Petition.

17. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to Settling Defendants' Past Response Costs, Past Response Costs, and this Consent Decree, including but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of the response actions at the Site for which the Past Response Costs or Settling Defendants' Past Response Costs were incurred, including any claim under the United States Constitution, the Constitution of the State of Oklahoma, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; or

c. any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law for Past Response Costs.

18. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

19. **Waiver of Claims by Settling Defendants.**

a. Settling Defendants shall not assert any claims and waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have for all matters relating to the Site against any person where the person's liability to Settling Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials (**De Micromis Waiver**).

b. Exceptions to waiver.

(1) The waivers under this Paragraph 19 shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person otherwise covered by such waivers if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

(2) The waiver under Paragraph 19.a (De Micromis Waiver) shall not apply to any claim or cause of action against any person otherwise covered by such waiver if EPA determines that: (i) the materials containing hazardous substances contributed to the Site by such person contributed significantly or could contribute significantly, either individually or in the aggregate, to the cost of the response action or natural resource restoration at the Site; or (ii) such person has failed to comply with any information request or administrative subpoena issued pursuant to Section 104(e) or 122(e)(3)(B) of CERCLA, 42 U.S.C. § 9604(e) or 9622(e)(3)(B), or Section 3007 of RCRA, 42 U.S.C. § 6927, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site; or if (iii) such person has been convicted of a criminal violation for the conduct to which the waiver

would apply and that conviction has not been vitiated on appeal or otherwise.

X. EFFECT OF SETTLEMENT/CONTRIBUTION

20. Except as provided in Paragraph 19 (Waiver of Claims by Settling Defendants), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Section IX (Covenants by Settling Defendants), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

21. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are Past Response Costs.

22. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the United States in this action is a civil action within the meaning of Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially-approved settlement pursuant to which each Settling Defendant has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

23. Each Settling Defendant shall, with respect to any suit or claim brought by it for matters related to this Consent Decree, notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Each Settling Defendant also shall, with respect to any suit or claim brought against it for matters related to this Consent Decree, notify EPA and DOJ in writing within 10 days after service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within 10 days after service or receipt of any Motion for Summary Judgment, and within 10 days after receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

24. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by Plaintiff set forth in Section VII.

XI. PROPERTY REQUIREMENTS

25. **Site Access.** Site access will be controlled by the Hudson UAO including, but not limited to, Sections XVI, XIX, and XX thereof.

26. **Notice to Successors-in-Title**

a. Settling Defendants have filed in the land records for Payne County, Oklahoma institutional controls covering the Site that include use restrictions in accordance with the Hudson UAO and the remedy for the Site selected by EPA in the Record of Decision for the Site (November 2007).

b. Owner Settling Defendant shall, prior to entering into a contract to Transfer its Affected Property, or 60 days prior to Transferring its Affected Property, whichever is earlier:

(1) Notify the proposed transferee that EPA selected a response action regarding the Site and Settling Defendant Land O'Lakes is required to perform a response action regarding the Site pursuant to, and in accordance with, the Hudson UAO; and

(2) Notify EPA of the name and address of the proposed transferee and provide EPA with a copy of the above notice that it provided to the proposed transferee.

27. In the event of any Transfer of the Affected Property, unless the United States otherwise consents in writing, Owner Settling Defendant shall continue to comply with its obligations under the Consent Decree.

28. Notwithstanding any provision of the Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. ACCESS TO INFORMATION

29. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, documents, and other information (including records, reports,

documents, and other information in electronic form) (hereinafter referred to as “Records”) within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Site.

30. Privileged and Protected Claims

a. One or both Settling Defendants may assert that all or part of a Record is privileged or protected as provided under federal law, provided they comply with Paragraph 30.b, and except as provided in Paragraph 30.c.

b. If one or both Settling Defendants assert a claim of privilege or protection, such Settling Defendant(s) shall provide Plaintiff with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, such Settling Defendant(s) shall provide the Record to Plaintiff in redacted form to mask the privileged or protected information only. Settling Defendants shall retain all Records that they claim to be privileged or protected until the United States has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in the Settling Defendants’ favor.

c. Settling Defendants may make no claim of privilege or protection regarding:

(1) any data regarding the Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or

(2) the portion of any Record that Settling Defendants are required to create or generate pursuant to this Consent Decree.

31. Business Confidential Claims. Settling Defendants may assert that all or part of a Record submitted to Plaintiff under this Section or Section XIII (Retention of Records) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Settling Defendants shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Settling Defendants assert a business confidentiality claim. Records that Settling Defendants claim to be confidential business information will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to EPA, or if EPA has notified Settling Defendants that the Records are not confidential under the standards of Section 104(e)(7) of

CERCLA or 40 C.F.R. Part 2 Subpart B, the public may be given access to such Records without further notice to Settling Defendants.

32. Notwithstanding any provision of this Consent Decree, the United States retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XIII. RETENTION OF RECORDS

33. Until 10 years after the Effective Date, each Settling Defendant shall preserve and retain all non-identical copies of Records now in its possession or control or that come into its possession or control, that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Owner Settling Defendant must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

34. At the conclusion of the record retention period, Settling Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such Records, and, upon request by EPA or DOJ, and except as provided in Paragraph 30 (Privileged and Protected Claims), Settling Defendants shall deliver any such Records to EPA.

35. Each Settling Defendant certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the United States and that it has fully complied with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e)(3)(B) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e)(3)(B), Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XIV. NOTICES AND SUBMISSIONS

36. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to DOJ by email: eescdcopy.enrd@usdoj.gov

Re: DJ# 90-11-3-11365

As to DOJ by mail: EES Case Management Unit
U.S. Department of Justice
Environment and Natural Resources Division
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DJ # 90-11-3-11365

As to EPA: George Malone, III
Senior Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 6
1201 Elm Street, Suite 500
Dallas, TX 75270-2102
malone.george@epa.gov

Laura Stankosky
Remedial Project Manager
U.S. Environmental Protection Agency
Region 6
1201 Elm Street, Suite 500
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As to Settling Defendants:

Jonathan C. Miesen
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Land O'Lakes, Inc.
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Arden Hills, MN 55126
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Byron E. Starns
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50 South Sixth Street, Suite 2600
Minneapolis, MN 55402
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Stephen L. Jantzen
Ryan Whaley Coldiron Jantzen Peters & Webber, PLLC
400 North Walnut Avenue
Oklahoma City, OK. 73104
sjantzen@ryanwhaley.com

XV. RETENTION OF JURISDICTION

37. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION

38. This Consent Decree constitutes the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

39. This Consent Decree shall be lodged with the Court for a period of at least 30 days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

40. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

41. Each undersigned representative of a Settling Defendant and the Assistant Attorney General, U.S. Department of Justice, Environment and Natural Resources Division, certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.


42. Each Settling Defendant agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

43. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

XIX. FINAL JUDGMENT

44. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS 29th DAY OF October, 2021.



PATRICK R. WYRICK
United States District Judge

Signature Page for Consent Decree Regarding Hudson Oil Refinery Superfund Site

**FOR THE UNITED STATES OF
AMERICA**

Dated: 8/30/2021

TODD KIM
Assistant Attorney General
Environment and Natural Resources
Division

**SCOTT
CERNICH**

Digitally signed by SCOTT
CERNICH
Date: 2021.08.30 11:38:03
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SCOTT M. CERNICH
Senior Counsel
U.S. Department of Justice
Environment and Natural Resources
Division
Environmental Enforcement Section
P.O. Box 7611
Washington, D.C. 20044-7611
Phone: (202) 514-0056
Email: scott.cernich@usdoj.gov

Signature Page for Consent Decree Regarding Hudson Oil Refinery Superfund Site

WREN STENGER

Digitally signed by WREN STENGER
DN: c=US, o=U.S. Government, ou=Environmental
Protection Agency, cn=WREN STENGER,
0.9.2342.19200300.100.1.1=68001003651787
Date: 2021.08.25 17:13:07 -05'00'

WREN STENGER

Superfund & Emergency Management

Division Director

U.S. Environmental Protection Agency

Region 6

1201 Elm Street, Suite 500

Dallas, TX 75270-2102

Malone, George

Digitally signed by Malone, George
DN: cn=Malone, George,
email=Malone.George@epa.gov
Date: 2021.08.25 14:04:30 -05'00'

GEORGE MALONE, III

Senior Assistant Regional Counsel

U.S. Environmental Protection Agency

Region 6

1201 Elm Street, Suite 500

Dallas, TX 75270-2102

Signature Page for Consent Decree Regarding Hudson Oil Refinery Superfund Site

FOR 
LAND O'LAKES, INC.

Aug. 11, 2021
Dated

JONATHAN C. MIESEN
Name (print):
Title: ASSOC. GENERAL COUNSEL
Address: 4001 LEXINGTON AVE. N.
ARDEN HILLS, MN 55126

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: JONATHAN C. MIESEN
Title: ASSOC. GENERAL COUNSEL
Address: SAME AS ABOVE
Phone: (612) 363-6567
email: jc.miesen@landolakes.com

Signature Page for Consent Decree Regarding Hudson Oil Refinery Superfund Site

FOR *J. Miesen*
CUSHING, OKLAHOMA
BROWNFIELDS, LLC

Aug. 11, 2021
Dated

JONATHAN C. MIESEN
Name (print):
Title: *ASSOCIATE GENERAL COUNSEL*
Address: *4001 LEXINGTON AVE. N.*
ARDEN HILLS, MN 55126

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: *JONATHAN C. MIESEN*
Title: *ASSOCIATE GENERAL COUNSEL*
Address: *SAME AS ABOVE*
Phone: *(612) 363-6567*
email: *jcmiesen@landolakes.com*

Consent Decree in *United States v. Land O'Lakes, Inc., et al.*, Case No. 5:16-cv-00170-PRW

EXHIBIT 1



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 6

1445 ROSS AVENUE, SUITE 1200

DALLAS TEXAS 75202-2733

JUN 19 2015

Sent via Electronic Mail

Mr. Byron E. Starns
Project Coordinator
Stinson, Leonard, Street LLP
150 South Fifth Street, Suite 2300
Minneapolis, MN 55402

RE: Revised Draft Data Evaluation Report and Revised Draft Remedial Action Report
And Notice of Violation of UAO
Hudson Refinery Superfund Site, Cushing, Oklahoma

Dear Mr. Starns:

The U.S. Environmental Protection Agency (EPA) received the revised draft Data Evaluation Report (DER) and revised draft Remedial Action (RA) Report on December 4, 2014. These revised documents were submitted in response to EPA's November 18, 2014 letter and as required by Section XIV of the Unilateral Administrative Order (UAO), signed January 6, 2009.

Modifications required by EPA's November 18, 2014, letter appear to have been addressed. The revised draft DER and revised draft RA Report received on December 4, 2014 are approvable; no additional modifications are required for these documents.

The EPA has indicated in letters sent June 27, 2014, and September 18, 2014, regarding the Remedial Design and Remedial Action costs described in RA Report, Table 2, that it lacks sufficient information and a complete background to provide approval or disapproval. On August 7, 2014, Land O'Lakes indicated that the costs in Table 2 had not been audited. Land O'Lakes also indicated that it included an allocated percentage of work plans, reports, meetings, etc. and an allocated percentage of non-direct field expenses (e.g., vehicle, equipment, field office, utilities) with the costs of field work, sampling, sample analysis and health and safety oversight. Allocating expenses in this manner lacks sufficient detail, and obscures the actual cost of the work and of fees charged for field work, document preparation, and non-direct expenses. Based on EPA guidance, Close Out Procedures for National

Priorities List Sites, OSWER Directive 9320.2-22, May 2011, costs are not included as “recommended content” of the RA Report. Because the guidance describes that costs may be included as optional, EPA has no further comment on the costs and has not made any final determination concerning such costs.

The EPA has indicated in letters sent June 27, 2014, and September 18, 2014 regarding Table 1 in the RA Report, that it neither approves nor disapproves the volumes in Table 1, regarding the described excavated quantities. EPA lacks sufficient information to determine the accuracy of the excavated volume of material listed in this table. EPA disagrees with the volume for sediment removal within the area of the Coke Pond. The volumes for the Coke Pond sediment, do not correlate with Land O’Lakes, October 12, 2010 - Remediation Progress Summary; the volume reported in RA Report Table 1 is 1000 cubic yards less than the volume reported in the Remediation Progress Summary.

In its June 27, 2014, letter EPA requested Land O’Lakes provide the basis for the estimates of soil with visual contamination. Land O’Lakes indicated in its August 7, 2014, letter that “General Comment (a)” in the footnote section RA Report, Table 1 provided an explanation of how soil quantities include soil with visual contamination were calculated. General Comment (a) does not address estimated volumes of soil with visual contamination. Numerous areas where soil with visual contamination was excavated also exceeded Record of Decision (ROD) cleanup levels for soil. Land O’Lakes has not provided any information regarding the process it used to calculate soil volumes for areas that were excavated for both soil with visual contamination and for soil that exceeded the ROD cleanup levels. Again, EPA lacks sufficient information to determine the accuracy of the excavated volume of material listed in Table 1, and it neither approves nor disapproves the volumes regarding the details for described excavated quantities. EPA does accept the total project quantity consisting of:

1. 28,457 tons of excavated material for Aeration Pond 7, Wastewater Pond 1, Wastewater Pond 2, and Wastewater Pond 3; and of
2. 50,715 cubic yards of material excavated from the South Refinery and from soil area of concern 7, and impacted soil and debris from the asbestos-containing material area.

Attachment 3 and Attachment 8 of the RA Report contain Land O’Lakes’ contractors’ field books and field note books. EPA neither approves nor disapproves Land O’Lakes’ contractors’ field books/field note books. In some instances the field books/field note books provide an incomplete record of daily activities during the remedial action field work. Additionally, in some instances the field books/field note books include opinions not consistent or not supported by EPA’s field notes or are written by an individual not present during the work that is described.

Attachment 11 of the RA Report contains the institutional control documents filed by the Oklahoma Department of Environmental Quality in coordination with Land O’Lakes. EPA has commented in the past that to the extent that there are more stringent provisions in the ICs than what is required by the ROD that EPA has no comment concerning controls not required by the ROD or Explanation of Significant Differences.

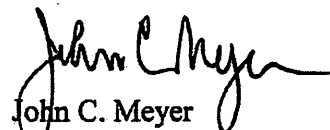
Appendix J of the DER includes EPA correspondence regarding the draft RA Report, draft DER, revised draft RA Reports, and the revised draft DERs. Including EPA correspondence is not a requirement of Section F.5.5 of the Statement of Work (SOW), Attachment 3 of the UAO. It is not clear why Land O’Lakes has included EPA letters in the DER.

Paragraph 75 of the UAO requires that Land O'Lakes notify EPA 30 days after it had concluded that the Remedial Action had been fully performed. Paragraph 75 requires that the Respondent notify EPA and schedule and conduct a pre-certification inspection to be attended by the Respondent and EPA. On November 19, 2013, Land O'Lakes notified EPA that it had concluded that the remedial action had been fully performed per paragraph 75 of the UAO. Land O'Lakes requested that if the Pre-Final Inspection to be conducted December 19, 2013, was deemed the Final Inspection, that the Final Inspection also be deemed the Pre-Certification Inspection. Based on the December 19, 2013, inspection EPA determined that the remedial action work appeared to be constructed per the remedial design. EPA indicated that no additional pre-final inspections were anticipated at that time. Based on the conditions of the site at the time of the December 19, 2013, pre-final inspection, EPA determined that the inspection also served as the final inspection per Section 6.1.2 of the SOW. Since the December 19, 2013, pre-final inspection was determined as the final inspection, the December 19, 2013, EPA determined that the inspection may also serve as the pre-certification inspection.

Paragraph 75 of the UAO and Section 6 of the SOW describe submission of a written report submitted within thirty (30 days) of the pre-certification inspection certifying that the Remedial Action has been completed in full satisfaction of the requirements of the order. While the Remedial Action construction work has been completed in satisfaction with the requirements of the order and the Remedial Action work has attained required performance standards, except for performance standards required for ground water, Land O'Lakes has not fully complied with UAO and SOW requirements. Land O'Lakes has failed to comply with document submission requirements, failed to follow approved plans, and failed to comply with the UAO work requirements. Land O'Lakes has failed to fully comply with UAO paragraphs 51, 60, 61, 62, 64, 65, 66, 67, 68, 75, 86, 88, and 90. The UAO at Paragraph 120 authorizes a civil penalty up to \$32,500 for each day Land O' Lakes violated the UAO. While modifications Land O'Lakes made to the revised draft Data Evaluation Report and revised draft Remedial Action Report have addressed EPA's required modifications, Land O'Lakes has not complied with all work requirements under the UAO, in full satisfaction of the requirements of the order and in compliance with paragraph 75.

Should you have any questions or need any additional information please do not hesitate to contact me or Laura Stankosky of my staff at (214) 655-7525.

Sincerely yours,



John C. Meyer
Deputy Associate Director
Superfund Remedial Branch

cc: Mr. Dennis Datin, ODEQ
Mr. Jack D. Lawmaster, P.E., Enviro Clean Services, LLC
Mr. George H. (Buddy) Richardson, Enviro Clean Services, LLC